IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2007

CORAM :

THE HON'BLE MR. JUSTICE P.JYOTHIMANI

S.A.No.1071 of 1994

1. Ellammal
2. S.Seshadri
3. Deivanayagi
4. Neelambal
5. Ambika
6. S.Arumugam
7. S.Nithyanandam
8. S.Kesavan
9. S.Dhanasekari .... Appellants / Respondents/ Plaintiffs

Vs.

1. State of Tamil Nadu
   Rep. by its Collector of North Arcot District,
   Sathuvachari, Vellore - 9.

2. The Tahsildar of Walajah Taluk
   Walajahpet, N.A.A.District. ... Respondents/Appellants/ Defendants

3. Sanjeevi Pandithar
   (Whereabouts not known,
   as per Order in
   I.A.77/94, dated 26.07.1994. .... Respondent/ Respondent/ Plaintiff

Second Appeal is filed under Section 100 of CPC against the Judgment and Decree of the learned Subordinate Judge, Ranipet, dated 26.11.1993 in A.S.No.36 of 1992, allowing the appeal, setting aside the Judgment and Decree of the learned District Munsif, Ranipet in O.S.No.317 of 1989, dated 03.03.1992.

For Appellants : Mr.Ilanthiriyan for
M/s. Sai, Barath Illan

For Respondents 1 and 2 : Mrs.Revathy, GA

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J U D G M E N T

The plaintiffs are appellants. The suit filed by the plaintiffs against the second defendant, Tahsildar, restraining him from proceeding further with the notice issued, under Section 6 of the Tamil Nadu Land Encroachments Act, 1905, marked as Ex.A.14, corresponding to Ex.B.7. The said suit was decreed by the trial court. However, the first appellate court has reversed the same by dismissing the suit, as against which, the plaintiffs have filed the present suit.

2. The suit was filed by the plaintiffs, on the basis of purchase from various documents, namely, registered sale deed, executed on 05.01.1971, marked as Ex.A.4, in respect of 54 cents in S.No.234/3 and 12 cents in S.No.234/15. In the sale deed, dated 21.12.1972, marked as Ex.A.5, in respect of 34 cents in S.No.234/3, apart from another sale deed, executed on 12.09.1975, marked as Ex.A.1, in respect of S.No.234/3, relating to 0.7 cents of lands. The case of the plaintiffs is that the said property, which included a larger extent of 12.8 acres, in Nandhiyalam Village, Walajah Taluk, N.A.A.Dt, comprised in S.No.234/3, which was categorised as Gramanatham, originally belonged to Manicka Mudaliar and Govindasamy Mudaliar, sons of Kumarasamy Mudaliar. It is seen that under sale deed, executed by them on 12.09.1934, marked as Ex.A.8, the said Manicka Mudaliar and Govindasmay Mudaliar have sold the said lands, in favour of Marimuthu Ammal, who in turn has sold under Ex.A.7, sale deed, dated 05.07.1947 to Arumuga Nadar, that was the sale deed, in respect of 54 cents in S.No.234/3, apart from other land. It is the said Arumuga Nadar, who is said to have sold the said 54 cents in S.No.234/3 to the plaintiffs on 05.01.1971.

3. Thus, according to the plaintiffs, all the properties were purchased by themselves and their predecessors in title and they have been in continuous enjoyment and possession. The plaintiffs are claiming to be the legal heirs of Sanjeevi Pandithar, who was the sole plaintiff in the suit, who was made as 3rd respondent in the appeal, since his whereabouts were not known for more than the statutory period. On the side of the plaintiffs, the said documents have been marked, apart from examining 4 witnesses. However, it has been the case of the defendants, that while admittedly, the lands have been classified as Gramanatham Poromboke, but the plaintiffs are not using the property as house sites, but using the same for agricultural purposes and therefore, the property can no more remain as Gramanatham and on that basis, the plaintiffs have been deemed to be the encroachers and by invoking the powers under the Land Encroachment Act, 1905, notice under Section 6 was issued to point out that from the total extent of 5.18 acres in S.No.234/3, the plaintiff was stated to have encroached an extent of 0.25

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acres, by using agricultural operation. The said notice also states the nature of the property as Gramanatham. D.W.1 and D.W.2, who are the officials of respondents examined as witnesses have also admitted that these properties are Gramanatham, but their defence is that they were forced to invoke the powers, under the Land Encroachment Act, on the basis that the plaintiffs have started using it for other purposes, namely, agricultural operation.

4. The trial court on the appreciation of the entire facts and evidence, while granting decree in favour of the plaintiffs, has clearly found that the predecessors in title of the plaintiffs and subsequent purchase by the plaintiffs under respective documents, the plaintiffs have been in possession of the property continuously without interruption. While, dealing with the claim of the defendants that since the housing sites have been used for agricultural operations, the plaintiffs are liable to vacate and hand over the possession, the trial court has found that when the property is admitted to be a Gramanatham poramboke, the same does not vest with the Government at any point of time and also relying upon Exs.B.10 and B.11, wherein it is stated as house and sites, has ultimately come to the conclusion that the plaintiffs have enjoyed for more than 60 years and therefore, they have acquired title by adverse possession. In fact, the trial court has also concluded on the basis that the defendants, who have stated that the plaintiffs are using for agricultural purpose from 1973 onwards, have not only raised the objection, except in the year 1983, by issuing notice under Section 6 of the Land Encroachment Act, under Ex.A.14 and it was specifically found on fact rejecting the contention raised on behalf of the defendants that B-Memo have been served on the plaintiffs and also relying upon the evidence of D.W.1 and D.W.2 that they were not aware, as to the extent of land in possession and occupation of the plaintiffs. On the other hand, the learned first appellate judge, while reversing the judgment, has mainly decided the issue on the basis of Ex.B.10 and Ex.B.11, whereby the respondents have objected the using of the site by the plaintiffs for agricultural operations and therefore, the plaintiffs are liable to vacate and hand over the possession.

5. A perusal of the judgment of the first appellate court shows that the appellate court held that the plaintiffs have not produced any documents to show that patta has been issued in their favour, by referring to Exs.A10, A11, A12 and A13, stating that the said documents, which are land receipts, does not indicate the patta number.

6. While admittedly, the lands in dispute are Gramanatham poramboke, there was no question of issuing patta, since the law is well settled on the issue, namely that when once the land is classified as Gramanatham, it ceases to vest with the Government

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and therefore, question of issuing patta to such Gramanatham does not arise. In the present case, it is not even the case of the defendants that due to the use of this lands, for different purposes, there was a re-classification by making the lands not to be Gramanatham. While so, the decision arrived at by the learned first appellate judge, on the basis that the plaintiffs have not proved under Exs.A.10 to A.13 that the patta has not been granted in their favour, has no legal basis whatsoever.

7. It is not even the case of the defendants that the lands which are classified as Gramanatham, do vest with the Government, and the occupiers have no right to sell the same to third party. A reference to the pleadings by the defendants shows that no where the defendants have raised objection to the various documents, by which the predecessors in title of the plaintiff have purchased the property, namely, under Exs.A4, A7, A8, including Ex.A.1. It is only on the basis that no patta was granted in favour of the plaintiffs, as well as predecessors in title, the defendants took the stand that neither the plaintiff, nor the predecessors in title were in ownership of the property and therefore, the claim of the plaintiffs, based on the document not sustainable. As I have stated, it is not even the case of the defendants that such sales are prohibited in respect of Gramanatham and in such circumstances, as correctly found by the learned trial judge, the plaintiffs and his predecessors have been in continuous possession and in uninterrupted enjoyment for more than 60 years and therefore, obtained title by adverse possession.

8. As correctly pointed out by the learned counsel for the appellant, legal position in respect of Gramanatham is clear by several judgments of this court, of which, the first judgment was rendered in S.Rengaraja Iyengar and another v. Achikannu Ammal and another reported in 1959(II) MLJ 513. It was in that case, while dealing with provisions under Section 3 (b) of Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948, and also Madras Land Encroachment Act, 1905, this court has held that the house sites owned by a person, which is generally called as Gramanatham is not covered under the Madras Land Encroachment Act, 1905. This court has distinguished the vesting of the rights over the lands, covered under the Madras Act XXVI of 1948, established under Section 3 (b), wherein there is a transfer in favour of the Government, where as in respect of house sites, owned by a person as Gramanatham, which is notified under Section 3 of the Act, the Government ceases to have any power over the said lands, since, the house sites in Gramanatham cannot be treated as ryotwari, as per the meaning of the Madras Estates (Abolition and Conversion in to Ryotwari), 1948. The operative portion of the judgment of this court in this regard is as follows :

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" The learned Subordinate Judge held that under Section 3 (b), the land to which this appeal relates became transferred to the Government and that the title of the plaintiffs' vendors got extinguished. I do not consider that the view can be supported. A house-site owned by a person is what is generally known as gramanatham is not, under Madras Act III of 1905, property of the Government. Section 2 of Madras Act III 1905 says, in regard to lands, which are not covered by clauses (a) to (e) of sub section (1) of Section 2, that those lands are and are herby declared to be the property of the Government, save in so far as they are temple-site or owned as house-site or backyard. In order that a land may properly be described as house-site, within the meaning of that expression in Section 2 of Madras Act III of 1905, it is not necessary that there should be a residential building actually constructed and standing on that site. A person may in a village habitation own a house in a street and a site on the outskirts of the habitation but within the limits of the gramanatham, which he uses for the purpose of storing his hay and manure, if he is an agriculturist, or as a smith, if he is a smith, or as a brick-kiln if he is a brick-maker or as a place for weaving if he is a weaver. On such sites, buildings or sheds are constructed or not such sites are, in my opinion, house-sites within the meaning of that expression in Section 2 of the Madras Act III of 1905. Madras Act III of 1905 is made applicable to an estate, when it is notified under Madras XXVI of 1948. The provision as to vesting under Section 3 (b) of Madras Act XXVI of 1948 should be read so as to be in consonance with the provisions regarding the applicability of the enactments relating to ryotwari areas, which are expressly made applicable to estates notified under the Act."

A reading of the said judgment, shows that when once a site is classified as Gramanatham, even if a portion of the said site is used for different purpose like agriculture, or a person, who is in possession of Gramanatham, using a portion of the land for the purpose of storing hay and manure or in the case of smith, using for brick-kiln etc, in fact, holding that the incidental purpose for which the Gramanatham or housing site can be used cannot taken away the character of Gramanatham as such. This judgment was

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subsequently followed by this court with clear affirmation and has rendered in A.K.Thillaivanam and another v. The District Collector, Chengai Anna District at Kancheepuram and others reported in 1998-3-L.W.603. That was also the case involving Gramanatham and the possession was admitted from 1954 onwards, on the basis of which, this Court has held that the party, who is in possession of Gramanatham continuously for more than a prescribed period could claim title by adverse possession. In fact, this Court has also, while categorically holding that when once the land is classified as village natham, no portion of the said land vests with the Government, even, if a portion of the land is converted in to an agricultural land. The relevant portion of the Judgment of this Court is as follows :

> " 19. That apart, it has been admitted in the counter affidavit that the land is a village Natham. The village Natham is a land which never vested with the respondents and they have no right to it. Admittedly, when the land has been classified as village Natham, it is obvious that no portion of the land vests with the respondents. The admitted classification is village Natham and merely because the petitioners have converted the same into agricultural lands, no right could accrue to the respondents even after conversion."

9. The said judgments was followed by the Division Bench in its recent decision rendered in The Executive Officer, Kadathur Town Panchayat, Harur Taluk, Dharmapuri District v. V.Swaminathan and others, reported in 2004 (3) CTC 270. While dealing with the provisions of Madras Estate (Abolition and Conversion into Ryotwari) Act, 1948, and also Madras Land Encroachment Act, 1905, following the earlier judgments of this Court, as stated above, the Hon'ble Division Bench of this Court, ultimately has held that law is well settled that when once a land is classified as Gramanatham, it is obvious that no portion of the said land will ever vest with the Government or Town Panchayat. The operative portion of the judgment of the Division Bench is as follows :

> " 12. Further, 'Grama Natham' is defined in the Law Lexicon as "ground set apart on which the house of village may be built." Similarly, Natham land is described in Tamil lexicon published under the authority of University of Madras to the effect that is a residential portion of village; or portion of a village inhabited by the non-Brahmins; or land reserved as house sites; etc.
>
> 13. In the light of the above and in view of the fact that the admitted classification of

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> the land being a 'Grama Natham', it is obvious that the land was never vested with the Government or the Town Panchayat. Inasmuch as the petitioners and their ancestors were in exclusive possession of the lands in question for the past 40 years, the impugned order of the third respondent in cancelling the pattas with a view to evict them summarily at the instance of the resolution passed by the Panchayat is not sustainable. Further, such a summary eviction is not permissible in law, when the disputed question of title is involved for adjudications as laid down by the Apex Court in number of decisions."

10. In view of the above categoric legal position, that when once a land is classified as Gramanathan, it never vest with the Government, I do not think that the decision of the learned First Appellate Judge, that simply because a portion of the said land has been used for a different purpose, namely, agricultural purpose, placing reliance on Ex.B.10 and Ex.B11, Adangal, a different decision can be arrived at, especially when admittedly, the land remains as Gramanatham, even as on date and undergone no re-classification. It is also relevant to point out, as correctly referred to by the learned trial judge, it is only after 1989, the respondent themselves have started objecting against the different user. Even the adangal extract, which is relied upon by the learned First Appellate Judge, namely, Ex.B.10 and Ex.B.11, relate to subsequent period, after 1989, while, it is the case of the plaintiffs, as proved by the document that the predecessors in title have been in enjoyment with title from 1934 onwards. In such circumstances, there is absolutely no difficulty to come to the conclusion that the enforcing of the provisions of Madras Land Encroachment Act, by issuing notice under Section 6, in respect of the suit property, which as on date, remains a Gramanatham, is unwarranted and outside the purview of the powers of the respondents, as correctly found by the learned trial judge.

11. In view of the above facts and circumstances of the case and established legal position, the judgment and decree of the learned First Appellate Judge is liable to be set aside and accordingly, the same is set aside, confirming the decree passed by the trial court. The Second Appeal stands allowed. The parties shall bear their respective costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1. The Subordinate Judge
   Ranipet.

2. The District Munsif
   Ranipet.

3. The Collector
   North Arcot District,
   Sathuvachari, Vellore - 9.

4. The Tahsildar of Walajah Taluk
   Walajahpet, N.A.A.District.

5. The Section Officer,
VR Section, High Court, Madras.

1 cc to Mr. Sai Bharath Illan, Advocate, sr. 14219
1 cc to Government Pleader, Sr. 14042

S.A.No.1071 of 1994

MJ (CO)
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